

No. 99-2200

[UNPUBLISHED]

Federal Prisoners; Coursen, Nurse,                   \*  
Medical Center for Federal Prisoners;               \*  
G. Diullo, Physical Therapist, Medical             \*  
Center for Federal Prisoners,                       \*  
   \*  
Appellees.   \*

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Submitted: July 26, 2000  
Filed: September 14, 2000

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Before BEAM, BRIGHT, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

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PER CURIAM.

Jorge L. Martinez appeals the district court's<sup>1</sup> judgment entered upon a jury verdict in favor of defendants on Martinez's claim that he was unconstitutionally punished for refusing to work when he was a pretrial detainee at the United States Medical Center for Federal Prisoners in Springfield, Missouri. We affirm.

The evidence at trial showed Martinez was placed in detention for two days in December 1988 for refusing an order to perform work he was not required to do as a pretrial detainee, and he was later placed in detention for his refusal to perform a housekeeping task in his living area. None of the three defendants against whom Martinez was proceeding, however, was personally involved in his placement in detention. Therefore, notwithstanding Martinez's position on appeal that the district court erred in failing to instruct the jury that requiring a pretrial detainee to work or be placed in detention is punishment, see Martinez v. Turner, 121 F.3d 712 (8th Cir. Aug.

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<sup>1</sup>The Honorable Ortrie D. Smith, United States District Judge for the Western District of Missouri.

25, 1997) (unpublished per curiam); Martinez v. Turner, 977 F.2d 421, 423 (8th Cir. 1992), cert. denied, 507 U.S. 1009 (1993), we find no prejudicial error, see Stemmons v. Missouri Dep't of Corrections, 82 F.3d 817, 820 (8th Cir. 1996) (new trial based on instructional error is in order only if error is prejudicial); Noll v. Petrovsky, 828 F.2d 461, 462 (8th Cir. 1987) (per curiam) (no liability based on doctrine of respondeat superior in Bivens-type action; defendants must be actively involved in alleged constitutional violation), cert. denied, 484 U.S. 1014 (1988).

The judgment is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.